

COMPLIANCE BOARD OPINION NO. 97-7

May 13, 1997

Mr. Dan Horan

The Open Meetings Compliance Board has considered your complaint of January 29, 1997, concerning the practices of the Frederick County Public Libraries Board of Trustees ("Library Board"). We are of the opinion that the Library Board's Budget Committee was required to comply with the Open Meetings Act when the committee met on December 16, 1996. We also find that the Library Board failed to document properly the closing of its meeting on January 8, 1997, although the Library Board was legally authorized to hold a closed meeting. We find no violation of the Act in the other instances identified in your complaint.

In two portions of your complaint, you refer to actions taken by the Library Board "without any public input." The Open Meetings Act does not grant the public any right to participate in the decision making process of public bodies. Rather, when the Act applies, it generally grants the public a right *to observe* the decision making process. §§10-501(a)(2) and (b) and 10-507(a) of the State Government Article. Hence, the Library Board's procedure for obtaining public comment about its decisions is a matter governed by other applicable law, if any, and the Library Board's own discretion.

Putting to one side the matter of "public input," the Compliance Board understands your complaint to identify the following alleged violations of the Act:

1. that a committee meeting was held in violation of the Act prior to the Library Board's approval of the library's budget for fiscal year 1998;
2. that an unlawful meeting of another committee preceded the Library Board's endorsement of a recommendation for the construction of a regional library;
3. that the Library Board held an unlawfully closed meeting "for certain invited library friends" on February 2, 1997; and
4. that the Library Board did not properly cite a basis for closing a portion of its January 8, 1997 meeting.

We shall consider each of these complaints in turn.

I

Budget Committee Meeting

Consisting of seven members and created by State statute, the Library Board is a “public body” generally subject to the Open Meetings Act. §10-502(h)(1).

Your complaint states that, at its January 8 meeting, the Library Board “approved a FY 98 library budget prepared during an undocumented ‘budget committee meeting’ without allowing any public input.” In a response on behalf of the Library Board, County Attorney John S. Mathias confirmed that the Library Board’s Budget Committee held a meeting on December 16, 1996:

This Committee is established in the Board’s bylaws. All 3 members of this Committee attended the meeting. The Library Director also attended as an ex-officio member. At this meeting, the Budget Committee reviewed the outline of a budget proposal prepared by the Library Director. The budget committee agreed to recommend this budget request to the full Board.¹

Because the Budget Committee was established in the Library Board’s bylaws, it is a “public body” itself subject to the Open Meetings Act. §10-502(h)(1)(ii)5. Nevertheless, the Library Board contends that the Act was not applicable to the December 16 meeting, because the Budget Committee was engaged in an “executive function” excluded from the Act. The suggestion is that the committee’s role in preparing a budget for future consideration by the Library Board is an “executive function.”

With exceptions not pertinent here, the Act “does not apply to ... a public body when it is carrying out an executive function.” §10-503(a)(1)(i).² The first step in the analysis is to decide whether the matter under discussion falls within any of the other “functions” defined in the Act. If a discussion falls within another defined function, the discussion cannot be considered an “executive function.” §10-502(d)(2).

¹ This information is drawn from Mr. Mathias’ supplemental response of April 11, 1997. The Library Board initially responded to the complaint by letter of March 6, 1997.

² Discussion of the exclusion may be found in Compliance Board Opinions 92-2 (October 23, 1992), 92-3 (November 9, 1992), 92-5 (December 22, 1992), 93-2 (January 7, 1993), 93-4 (February 24, 1993), 94-7 (August 16, 1994), 95-2 (June 20, 1995), 95-5 (October 18, 1995), 95-7 (October 18, 1995), 95-8 (November 2, 1995), and 96-5 (May 1, 1996).

One of these functions is a “quasi-legislative function.” Its definition includes “the process or act of ... approving, disapproving, or amending a budget.” §10-502(j)(2). The Library Board argues that the process of *preparing* a budget is not part of “the process or act of ... approving, disapproving, or amending a budget.” In support of this position, the Library Board cites a decision of the Court of Appeals, *Board of County Commissioners v. Landmark Community Newspapers*, 293 Md. 595, 446 A.2d 63 (1982). The *Landmark* case involved an effort by a newspaper reporter to attend closed meetings at which the Carroll County Commissioners discussed the preparation of the county’s budget for the next fiscal year. Because Carroll County has no county executive, the County Commissioners carry out both executive and legislative activities in governing Carroll County. The county argued that “the preparation of a budget is an executive function of county government different from the process of approval, disapproval, or amendment of a budget which the Act classifies as a quasi-legislative function.” 293 Md. at 602.

The County Commissioners had adopted a resolution that specified the process under which the budget would be developed. Under the resolution, a budget officer and heads of county agencies would provide information and proposals to the County Commissioners, who would then develop the budget. In other words, the resolution envisioned a budget preparation process very similar to that in counties with a county executive, except that the County Commissioners would make the preliminary decisions about the proposed budget that, in other counties, would be made by a county executive. Then the budget would be formally filed and made subject to public hearings. After the hearings, the County Commissioners could change the budget and would finally adopt it by ordinance. Relying on this process, the county claimed “that the actual preparation of the budget is an executive function.... [T]he quasi-legislative function does not begin until after the filing of the budget The required hearings, revisions, and final approval then follow.” 293 Md. at 605.

This argument was not ruled upon by the Court of Appeals, because the Court decided the case in the county’s favor on other grounds.³ Nevertheless, the Court suggested that, had it reached the merits of the county’s argument, it would have endorsed the distinction between budget preparation and budget approval, considering the facts of that case: “Much is to be said for the County’s argument that the acts here under review are part of an executive function.” *Id.*

The Compliance Board has not previously addressed the status under the Act of preliminary budget preparation as an activity potentially distinct from budget approval. In two prior opinions holding that budget-related activities were quasi-

³ The Court held that the budget preparation meetings of the County Commissioners were part of the county’s process of “appropriating public funds” and therefore could not be subject to a judicial enforcement action. §10-510(a)(1)(i).

legislative and therefore subject to the Act, the public body was considering a budget prepared by a different entity. *See* Compliance Board Opinions 97-2 (March 3, 1997) (presentation to county commissioners about school board's budget) and 93-8 (July 16, 1993) (meeting of county council to discuss proposed budget submitted by county executive). We do not read the Court's comment in the *Landmark* case to be pertinent in any way to the process by which one public body reviews the proposed budget of a different public body. That entire process is a quasi-legislative function subject to the Act.

The issue posed by the Budget Committee's meeting falls somewhere between *Landmark* and our prior opinions. On the one hand, the Budget Committee interacts with the library's staff in a way comparable to that of the Carroll County Commissioners with the county's agency heads. On the other hand, the Budget Committee, albeit composed of members of the Library Board, is a separate and distinct public body.

The very fact of its distinct status suggests to us that the Budget Committee's function in reality is the first of a two-step budget approval process: First the library's staff must obtain the Budget Committee's approval for the budget that the staff has developed, and only then does the full Library Board review and approve the budget. *Both* steps, in our opinion, involve the process by which the budget is "approved, disapproved, or amended" — a quasi-legislative, not an executive, function. Were we to conclude otherwise, we would be encouraging a device for secrecy in the performance of the governmental activity — budget review — that should be most open to public observation and accountability. The dictum in *Landmark* does not compel this result.

Therefore, we conclude that the Budget Committee's December meeting should have been the subject of a public notice and should have been open to the public unless one of the Act's exceptions justified the closing of a specific portion of the meeting. Since the Library Board has neither indicated that the meeting was open after notice nor identified an applicable exception, we assume that these requirements of the Act were not met.⁴

II

Regional Library Recommendation

Your complaint states that, during the January 8 meeting, the Library Board "voted to endorse a 'committee recommendation' for a 15,000 sq. ft. regional library as part of the Urbana Planned Unit Development (PUD) without any

⁴ The Library Board does indicate that minutes of the Budget Committee meeting will be forthcoming.

public input.” The Library Board responds that the committee in question was the Long-Range Planning Committee, consisting of four Library Board members. A quorum of the committee met with the Library Director on November 25, 1996. The Library Board states that a notice of the meeting was posted in the lobby of the main branch of the library and that the meeting was open to the public. Minutes of the meeting will be prepared.

It appears, under these circumstances, that the committee complied with the Open Meetings Act.⁵

III

Closed Meeting on February 2, 1997

Your complaint states that, at its January 8 meeting, the Library Board “voted to hold a ‘closed to the public’ meeting for certain invited library friends on 2 February 97.” The Compliance Board understands you to be objecting to the closed nature of the February 2 event.

The Library Board characterizes the February 2 event as a social gathering to which the Act does not apply. Indeed, the Act is not applicable to “a chance encounter, *social gathering*, or other occasion that is not intended to circumvent [the Act].” §10-503(a)(2).

The minutes of the January 8 meeting provided to us by the Library Board indicate that the event, to which “Advisory Board members and friends of the Library” were invited, was essentially a catered social occasion. When the Library Director asked about an agenda, “[t]he Board members agreed that the reception should be a social affair and no formal agenda would be required.” The minutes do go on to reflect the Director’s suggestion that the event include “a short welcome speech which includes an introduction of the Board members and a summary of the improvements to the libraries as well as problems the libraries face in the future.” In our view, this kind of general presentation is characteristic of social events held by public and private organizations and did not by itself transform the gathering into a meeting for the conduct of public business. Assuming that the presentation did not develop into a substantive discussion, as the Library Board assures us, then the February 2 gathering was a genuine social event not intended to circumvent the Act, to which the Act does not apply.

⁵ The Library Board also suggested that the Long-Range Planning Committee’s discussion was an aspect of budget preparation not subject to the Act. In light of our conclusion, we need not discuss this point.

IV**Basis for Closed Session**

Your complaint states that, at its January 8 meeting, the Library Board “adjourned into an executive session for what was stated as ‘no announced reason.’” The Library Board asserts that it went into closed session on January 8 to discuss the potential acquisition of land for a library construction project. The Library Board suggests, and we agree, that the Open Meetings Act permits a closed discussion of this topic. Under §10-508(a)(3), a public body may meet in closed session to “consider the acquisition of real property for a public purpose and matters directly related thereto.”

Before a public body may invoke this or any other exception in §10-508, however, the public body must follow certain procedures required by the Act. Specifically, the presiding officer is to:

- (i) conduct a recorded vote on the closing of the session; and
- (ii) make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.

§10-508(d)(2).

The Library Board acknowledges that it did not comply with the second of these requirements. In this respect, the Library Board violated the Act. We also note the assurance of the County Attorney that “the Library Board will take corrective action” to comply with this requirement in the future.

OPEN MEETINGS COMPLIANCE BOARD

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